IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.403 OF 2006
IN
FIRST APPEAL NO.117 OF 2006

Hiralal Umashankar Mishra ...Appellant
vs.
Municipal Corporation of
Greater Mumbai ...Respondent

Mr.G.S.Hegde with Mr.U.V.Singh for the Appellant
Mr.J.J.Xavier for the Respondent

CORAM: A.S.OKA, J.
DATED: APRIL 17, 2006.

P.C.:

1. Rule. Respondent waives service. Taken up for hearing forthwith.

2. The suit is filed for challenging the order on the basis of notice dated 1st April 2003 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888. The said notice relates to the structure on land bearing C.T.S.No.42-B situated at S.V.Road, Goregaon (West), Mumbai. The case of the Appellant in response to the notice is that his structure is on the land bearing C.T.S.No.43(2) and not on C.T.S.No.42-B.

3. The learned Counsel for the Applicant states that on the last date he has made a statement that he has no objection if the structures on the land bearing C.T.S.No.42-B are demolished by the Respondent-Corporation after carrying out

the survey by the competent City Survey Officer.

4. Prima facie, it appears that the notice does not relate to the said C.T.S. No.43(2). Hence, the structure of the Appellant on C.T.S.No.43(2) will have to be protected till the final disposal of the Appeal.

5. Hence, I pass the following order :

i) Till the final disposal of the Appeal, the Respondent-Corporation is restrained from demolishing the suit structure situated on C.T.S.No.43(2) on the basis of notice dated 1st April 2003 and order dated 31st May 2003. It is made clear that the Respondent-Corporation will be free to demolish the structure on land bearing No.42-B after carrying out demarcation through the City Survey Officer.

ii) Grant of interim relief will not preclude the Respondent-Corporation from initiating a fresh action in respect of the suit structures on the land bearing C.T.S.No.43(2). It is made clear that the action will be taken only after following the principles of natural justice.

iii) There will be no order as to costs.

Judge.